



FAIR POLITICAL PRACTICES COMMISSION

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August 5, 2009

Ann M. Grottveit
Kahn, Soares & Conway, LLP

REDACTED

Re: FPPC Case No. 090014, California Avocado Commission, Mark Affleck ✓

Dear Ms. Grottveit:

On January 13, 2009, the Fair Political Practices Commission opened an investigative file based on newspaper reports concerning the California Avocado Commission ("CAC") and an audit of the CAC conducted by the California Department of Food & Agriculture ("CDFA"). Mark Affleck was the CAC's President for 20 years, until his May 2008 resignation in the wake of the audit findings. We obtained a copy of the CDFA audit and reviewed it to determine whether there were any violations of the Political Reform Act (the "Act").¹

The CDFA audit found that the CAC, under Mr. Affleck's leadership, provided lavish employee benefit packages to Mr. Affleck and six other employees over the course of three years. The benefits included, but were not limited to, an auto benefit plan, wellness packages, career coaches, toll road responder fees, investment counseling, employee lunches, staff appreciation gifts, and unmonitored agency credit card usage. Between July 2005 and May 2008, the CAC provided these fringe benefits of nearly \$346,000 to the seven employees. In addition, credit card purchases over the same period for the seven employees totaled about \$1.5 million.

Section 89503, subdivision (c) provides that no member of a state board or commission, or designated employee of a state or local government agency, shall accept gifts from any source in any calendar year with a total value of more than \$250², if the member or employee would be required to report the receipt of the income or gifts from that source on his or her statements of economic interests. Based on our review, the receipt of the "employee benefits packages" provided with the expenditure of CAC funds would not constitute a "gift" to the employees

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² The gift limit amount is adjusted biennially due to the cost of living, and is currently set at \$420 per calendar year.

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under the Political Reform Act. Section 82030, subdivision (b)(2) specifically excludes from the definition of "income" (which includes a gift) any salary from a state, local or federal agency, including reimbursement for expenses, per diem, social security, disability, or other similar benefit payments. (Emphasis added.) Since the CAC funds expended were arguably "employee benefit payments" conferred by CAC's management, they would most likely not be considered as gifts under the Act. However, you and your client, the CAC, should be aware of our newly adopted Regulation 18944.3, which states that payments by a government agency that provide food, beverage, entertainment, goods or services of more than a nominal value to an official in the agency is a gift to that official unless the payment is a lawful expenditure of public moneys. (A copy of the regulation is enclosed for your review.)

We note that the conduct in this matter appears to be a misuse of public funds or in violation of government contracting laws over which the FPPC does not have jurisdiction. In addition, it appears that the audit findings were forwarded to the Department of Justice for review and possible prosecution for violation of other state laws.

Based on the foregoing, it does not appear that a violation of the Political Reform Act occurred, and as such, our file in this matter has been closed.

If you have any questions, please feel free to contact me at (916) 322-8062.

Sincerely,

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Melodee A. Mathay
Staff Counsel IV
Enforcement Division

Enclosure